

granted if the contract be stated and admitted. For if the bill states and admits, that the defendant asserts and relies upon what he alleges to be a valid adverse title in himself, the plaintiff thereby states himself out of court, or if the defendant in his answer positively denies the plaintiff's title, the injunction will be refused; or having been granted will, on the coming in of such an answer, be dissolved.(z)

It is said, however, in one of the most respectable treatises on pleadings in chancery, that, "pending an ejectment in a court of common law, a court of equity will restrain the tenant in possession from committing waste, by felling timber, ploughing ancient meadow, or otherwise. Against this inconvenience a remedy at the common law was in many cases provided during the pendency of a real action, by the writ of *estrepement*; and when the proceeding by ejectment became the usual mode of trying a title to land, as the writ of *estrepement* did not apply to the case, the courts of equity, proceeding on the same principles, supplied the defect."(a) But the only authorities cited in support of what is here said are cases between landlord and tenant, where the title of the plaintiff had not been, and could not be denied by the defendant who confessedly held only as tenant.(b) Whence it is evident, that there can be no means of preventing waste from being done upon real estate, in *England*, pending a suit to determine the title, other than the writ of *estrepement*; and that writ, it is said, has fallen into disuse.(c)

But in a variety of other cases the *English* Court of Chancery is in the habit of exercising its preventive and conservative powers for the express purpose of preserving the subject of litigation from waste, injury, or total loss, pending the controversy.

In cases of patent rights, where the plaintiff is in possession of the invention, under colour of title, an injunction may be granted pending the proceedings at law to try the right.(d) And so, too, where the plaintiff claims the copy-right of a book, an injunction may be granted to prevent publication, during the continuance of a suit at law. In cases of copy-right the jurisdiction is assumed merely for the purpose of making the legal right effectual, which

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(z) *Pillsworth v. Hopton*, 6 Ves. 51; *Smith v. Collyer*, 8 Ves. 89; *Norway v. Rowe*, 19 Ves. 147.—(a) *Mitf. Plea.* 136.—(b) *Lathropp v. Marsh*, 5 Ves. 259; *Pulteney v. Shelton*, 5 Ves. 260, note; *Onslow v. —*, 16 Ves. 173.—(c) 3 *Blac. Com.* 227; *Calvert v. Gason*, 2 *Scho. & Lefr* 561.—(d) *The Universities of Ox. & Cam. v. Richardson*, 6 Ves. 689.